

ROBERT CORNETT

IBLA 78-246

Decided July 12, 1978

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring the Fall Creek No. 4 Lode Mining Claim null and void ab initio (MC 3660).

Affirmed.

1. Mining Claims: Generally -- Mining Claims: Location -- Mining Claims: Withdrawn Land -- Wild and Scenic Rivers Act

The Wild and Scenic Rivers Act withdrew from appropriation under the mining laws the minerals in Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river listed as a potential addition to the Wild and Scenic River System. Land within one-quarter mile of the bank of the Illinois River, Oregon, a river designated in section 5(a) of the Act as a potential addition to the system, is withdrawn from mineral entry and therefore, not available for mining claims.

2. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

Mining claims located on lands within a withdrawal which were not open to mineral entry are properly declared null and void ab initio.

3. Mining Claims: Generally -- Mining Claims: Location -- Mining Claims: Surface Uses

The location of a mining claim simply to maintain a road and insure access to other claims beyond is not a legitimate purpose within the scope or intention of the general mining law.

APPEARANCES: Robert Cornett, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

This is an appeal from a decision of the Oregon State Office, Bureau of Land Management, dated January 27, 1978, declaring the Fall Creek No. 4 Lode Mining Claim null and void ab initio for the stated reason that the land was withdrawn from mineral entry by the designation of the Illinois River as a potential addition to the Wild and Scenic Rivers System, by the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. § 1271 et seq. (1976).

The facts of record show that the claim is situated in the S 1/2 sec. 33, T. 37 S., R., 9 W., Willamette Meridian, Oregon, within the Siskiyou National Forest, and that it was located on October 1, 1977. The Illinois River flows through the southern portion of sec. 33 within one-quarter mile of the Fall Creek claim. The entire length of the Illinois River, Oregon, was included in the original list of rivers in section 5(a) of the Wild and Scenic Rivers Act, supra, designated as potential additions to the National River System.

Appellant contends that the land in his claim is not withdrawn from mineral entry by the Wild and Scenic Rivers Act. He argues, essentially, that the withdrawal was invalid and inoperative as to the Illinois River after 1972. He states that the Illinois River never formally became a component of the National River System prior to the expiration of the specific time limits set forth in section 7 of the Act. He cites a proposal to include the Illinois River in the National System of November 1970 and June 1971, which he states was rejected by the Secretary on September 30, 1971. He further states that an amendment to extend the withdrawal provisions of the original Act, dated May 10, 1974 (P.L. 93-279), did not serve to revive the expired withdrawal of the Illinois River.

[1] The Wild and Scenic Rivers Act of October 3, 1968, as amended, 16 U.S.C. § 1271 et seq. (1976), creates a wild and scenic river system to preserve and protect certain rivers in free flowing condition. The Act designated sections of certain rivers as components of the system, 16 U.S.C. § 1273 (1976). It also designated the Illinois River, among certain other rivers, as potential

additions to the system and provided a method of adding them to it. 16 U.S.C. §§ 1275, 1276(a) (1976). Lands constituting the bed or bank or within one-quarter mile of the bank of any designated or potential addition river are specifically withdrawn from mineral entry as stated in 16 U.S.C. § 1280:

The minerals in any Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank or any river which is listed in section 1276(a) of this title are hereby withdrawn from all forms of appropriation under the mining laws during the periods specified in section 1278(b) of this title.

The time elements spelled out in the original Act provided for a temporary withdrawal for 5 years after the date of the Act and for an additional period of 3 years in the case study of rivers which the Secretary of the Interior or the Secretary of Agriculture recommended be added to the authorized category or for an additional period of 1 year in the case of a State-named river which is recommended to the Secretary of the Interior for inclusion in the system.

The original 5-year withdrawal period was extended for an additional 5 years to read "during the ten-year period following October 2, 1968" by an amendment to the Act. P.L. 93-279, May 10, 1974, 16 U.S.C. § 1278(b)(1) (1976).

Appellant argues the area in question was not withdrawn after 1972. This conclusion is not correct. The terms of the original Act clearly withdrew all designated and potential addition river areas through October 2, 1973, and the cited amendment extended that withdrawal through October 2, 1978. Contrary to appellant's indication, it was not necessary for rivers named as potential additions to formally become a part of the National System to be afforded the same withdrawal protection. Cf. Walter B. Freeman et al., 25 IBLA 150 (1976); Ralph Page, 8 IBLA 435, 438 (1972).

Appellant mentions a proposal to include the Illinois River in the National System, which he indicates as of yet has not been accepted. The fact is that the Illinois River has been proposed and is still under consideration, and the temporary withdrawal remains in effect under the provisions of the Act. The Act requires set procedures including written notice to Congress and publication in the Federal Register before either a formal approval or disapproval can be consummated. 16 U.S.C. §§ 1275, 1278. Also, the BLM land records still show the land in a withdrawn status. Therefore, the lands in question remain withdrawn until the critical date previously specified.

[2] Accordingly, based on the information of record the land was segregated from mineral entry and the State Office properly

declared the Fall Creek No. 4 Claim null and void ab initio. Janelle R. Deeter, 34 IBLA 81, 83 (1978) and cases cited therein.

[3] Further, appellant states, "My purpose for holding the claim is for access to the claims beyond, and of course to have the right to reasonably maintain the road. Therefore, I ask you, Sir, for permission to do this, and in return I will not disturb the surface." The location of a mining claim simply to insure access to other claims is not a legitimate purpose within the scope or intention of the general mining law. See Alfred E. Koenig, 4 IBLA 18, 78 I.D. 305 (1971).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Douglas E. Henriques
Administrative Judge

